Yong Siew Agiing (suing as administratix of the estate of the late Hou Bok Chai (deceased)) v The Owners and The Persons Interested In The Vessel 'ML Saga 86' & Ors

COURT OF APPEAL (KUCHING) — CIVIL APPEAL NO Q–02–03 OF 1999
MOKHTAR SIDIN, MOHD GHAZALI AND NIK HASHIM JJCA
21 OCTOBER 2004

Succession — Letters of administration — Schedule of assets — Action for damages instituted by administratix not included in list of assets — Whether curable by amendment — Whether administratrix could institute action not stipulated in list/schedule attached as asset

On 18 June 1987 the appellant commenced an Admiralty action ('the 1987 action') against the respondents in her capacity as administratrix of the estate Hou Bok Chai ('deceased') claiming, *inter alia*, for damages for personal injuries caused to the deceased. The letters of administration to administer the estate of the deceased did not state the said claim for damages as an asset. On 13 July 1988, an interlocutory judgment in default of appearance for damages to be assessed was entered against the third and fourth respondents, and on 17 February 1989 a similar order was entered against the second, fifth and sixth respondents. On 19 May 1994, the second to sixth respondents applied to strike out the 1987 action on the ground that the appellant had no right of action under the grant of the letters of administration. On 4 July 1994, on an application by the appellant, the probate officer added as an asset the 'action for damages under the Civil Law Act 1956' to the list of assets annexed to the grant upon a declaration made by the appellant in a further affidavit. On 29 August 1994, the High Court dismissed the respondents' application to strike out the 1987 action. However, there was no appeal filed by the respondents against that decision. On 6 March 1996, upon assessment of damages the senior assistant registrar ('the SAR') allowed RM145,000 as general damages and RM6,000 as special damages, interest thereon and costs. On 28 May 1996, the High Court dismissed the respondents' appeal against the decision of the SAR. At the said hearing, the respondents contended that the default judgments were a nullity because the appellant had no right to bring the action. The High Court held that the respondents were precluded from raising it, *inter alia*, on the ground that they had not appealed against its decision on 29 August 1994. The respondents application to the Court of Appeal for leave to appeal against the above decision was refused. On 15 September 1997, the respondents filed this suit applying for the declaratory relief, namely, that the interlocutory judgments in default and the assessment of damages entered in the 1987 action were a nullity.

On 26 November 1997, the appellant applied for an order to strike out the suit under O 18 r 19 and O 92 r 4 of the Rules of the High Court 1980 ('RHC'), *inter alia*, on the ground that it was an abuse of the process of the court. The judicial commissioner ('JC') dismissed the appellant's application. Dissatisfied with the decision, the appellant appealed to this court.

Held, allowing the appeal with costs: A

(1) Since the appellant had the legal capacity to bring the action at the material time, the default judgments which were entered regularly, were indeed not a nullity as contended by the respondents (see para 24).

(2) The JC had erred in law in failing to appreciate the true object or purpose of the inventory or schedule of property or list annexed to the grant. Those assets were vested in the administrator upon the issue of letters of administration for the purposes of administration (see para 25). B

(3) The inventory or schedule of property or list of assets annexed to the grant provides a description of the assets to be administered and is important for the purpose of assessment of the true value of the estate and the estate duty payable or making provision for security. Section 5(a) of the Administration of Estates Ordinance (Cap 80) Sarawak provides that grant of letters of administration is not to be issued until an affidavit and inventory in the prescribed form of the property and assets of the deceased is sworn and proper estate duty is paid (s 5(b)). Moreover, s 16(1) of the Ordinance empowers the probate officer to add an asset omitted from the inventory after it is declared by a further affidavit and after payment of such further duty and interest as may be due thereon (see para 26). C D

(4) The failure to include the claim for damages in the list of assets annexed to the grant was not fatal but curable by amendment. The amendment to the list on 4 July 1994 dated back to the date of the original issue of the grant of the letters of administration, ie 20 April 1987, and as such, the amended list must be read as though the amendment had been inserted from the beginning (see para 28). E

(5) The appellant became vested with the authority to sue for damages as from the 20 April 1987 and hence, she was properly clothed with the authority to bring the action against the respondents. The JC had erred in law when he held that the amendment to the letters of administration on 4 July 1994 did not have retrospective effect to the date of the grant on the ground that the claim was already barred. Accordingly, it was therefore not justified to allow the respondents to attack the default judgments (see para 30). F G

(6) The JC had erred when he dismissed the appellant's application with costs. He ought to have held that the respondents were precluded by the doctrines of *res judicata* and *functus officio* from re-agitating the nullity issue on the default judgments that they were trying to bring up in their suit. Clearly, the suit amounted to an abuse of the process of the court (see para 36). H

[**Bahasa Malaysia summary** I

Pada 18 Jun 1987 perayu telah memulakan tindakan admiralti ('tindakan 1987') terhadap responden dalam kedudukannya sebagai pentadbir estet Hou Bok Chai

('si mati') menuntut, *inter alia*, pampasan bagi kecederaan yang dialami oleh si mati. Surat kuasa mentadbir untuk mentadbir estet si mati tidak menyatakan tuntutan tersebut sebagai aset. Pada 13 Julai 1988 penghakiman ingkar kehadiran interlokutori untuk kerugian ditaksirkan dimasukkan terhadap responden ketiga dan keempat, dan pada 17 Februari 1989 perintah yang sama dimasukkan terhadap responden kedua, kelima dan keenam. Pada 19 Mei 1994, responden kedua hingga keenam memfailkan permohonan untuk membatalkan tindakan 1987 tersebut atas alasan perayu tidak mempunyai hak untuk membawa tindakan di bawah pemberian surat kuasa mentadbir. Pada 4 Julai 1994, atas permohonan perayu, pegawai probet telah memasukkan sebagai aset 'tindakan untuk kerugian di bawah Akta Undang-undang Sivil 1956' di dalam senarai aset yang dilampirkan bersama pemberian selepas perayu memaklumkannya melalui afidavit tambahan. Pada 29 Ogos 1994, Mahkamah Tinggi telah menolak permohonan responden untuk membatalkan tindakan 1987 tersebut. Tiada rayuan dibuat oleh responden ke atas keputusan tersebut. Pada 6 Mac 1996, selepas kerugian ditaksirkan, penolong kanan pendaftar ('PKP') telah membenarkan RM145,000 sebagai ganti rugi am dan RM6,000 sebagai ganti rugi khas, faedah dan kos. Pada 28 Mei 1996, Mahkamah Tinggi menolak rayuan responden terhadap keputusan PKP. Dalam perbicaraan tersebut responden-responden berhujah bahawa penghakiman ingkar tersebut adalah tidak sah kerana perayu tidak mempunyai hak untuk membawa tindakan tersebut. Mahkamah Tinggi telah memutuskan bahawa responden tidak boleh membangkitkan isu ini kerana antara lainnya, mereka gagal membuat rayuan terhadap keputusannya pada 29 Ogos 1994. Responden-responden telah memohon kepada Mahkamah Rayuan untuk kebenaran untuk merayu terhadap keputusan di atas tetapi ia ditolak. Pada 15 September 1997, responden-responden memfailkan guaman ini memohon deklarasi, iaitu penghakiman ingkar interlokutori tersebut dan kerugian yang ditaksirkan dalam tindakan 1987 adalah tidak sah.

Pada 26 November 1997, perayu memohon untuk satu perintah untuk membatalkan guaman tersebut di bawah A 18 k 19 dan A 92 k 4 Kaedah-Kaedah Mahkamah Tinggi 1980 ('KMT'), *inter alia*, atas alasan ia adalah penyalahgunaan proses mahkamah. Pesuruhjaya kehakiman ('PK') menolak permohonan perayu. Terkilan dengan keputusan tersebut, perayu merayu kepada mahkamah ini.

Diputuskan, membenarkan rayuan dengan kos:

(1) Oleh sebab perayu mempunyai kapasiti undang-undang untuk memulakan tindakan pada masa berkenaan, penghakiman ingkar yang telah dimasukkan dengan betulnya, tidak merupakan suatu pembatalan seperti yang diadukan oleh pihak responden (lihat perenggan 24).

(2) Pesuruhjaya kehakiman terkhilaf di sisi undang-undang kerana gagal untuk menyedari objek utama atau tujuan inventori atau jadual harta benda atau senarai yang disertakan bersama geran tersebut. Aset-aset tersebut telah diletakhak kepada pentadbir selepas surat pentadbiran dikeluarkan bagi tujuan pentadbiran (lihat perenggan 25).

(3) Inventori atau jadual harta benda atau senarai aset-aset yang disertakan bersama pemberian tersebut memberikan gambaran mengenai aset-aset yang perlu ditadbirkan dan adalah penting untuk tujuan taksiran nilai sebenar estet dan duti harta pusaka yang perlu dibayar atau membuat peruntukan untuk tanggungan. Seksyen 5(a) Ordinan Pentadbiran Harta (Bab 80) Sarawak yang memperuntukkan bahawa pemberian surat kuasa tadbiran tidak akan dikeluarkan sehingga afidavit dan inventori dalam cara harta benda dan aset-aset yang ditetapkan dibuat di bawah sumpah dan duti harta yang betul telah dibayar (s 5(b)). Tambahan pula, s 16(1) Ordinan memberi kuasa kepada pegawai probet untuk menambah sesuatu aset yang tidak dimasukkan di dalam inventori selepas ia diisytiharkan melalui satu lagi afidavit dan selepas pembayaran untuk duti yang selebihnya dan faedah yang kena dibayar selepasnya (lihat perenggan 26).

(4) Kegagalan untuk memasukkan tuntutan untuk ganti rugi di dalam senarai aset yang dilampirkan kepada pemberian tersebut tidak membawa kepada pemansuhannya tetapi sesuatu yang boleh diperbetulkan melalui pindaan. Pindaan kepada senarai pada 4 Julai 1994 telah ditarikhkan semula kepada tarikh isu asal pemberian surat kuasa tadbiran, iaitu pada 20 April 1987, dan dengan itu, senarai yang dipinda harus dirujuk seperti pindaan tersebut dimasukkan pada permulaannya (lihat perenggan 28).

(5) Perayu diletakhak dengan kuasa untuk menuntut ganti rugi bermula dari 20 April 1987 dan dengan itu, dia mempunyai hak yang sewajarnya untuk membawa tindakan tersebut terhadap pihak responden. PK terkhilaf di sisi undang-undang apabila dia memutuskan bahawa pindaan kepada surat kuasa tadbiran pada 4 Julai 1994 tidak mempunyai kesan tinjau balik terhadap tarikh pemberian tersebut atas alasan tuntutan tersebut telah pun digalang. Dengan sewajarnya, tidaklah adil untuk membenarkan pihak responden untuk mempertikaikan penghakiman ingkar (lihat perenggan 30).

(6) PK terkhilaf di sisi undang-undang apabila dia menolak permohonan perayu dengan kos. Dia sepatutnya memutuskan bahawa responden dihalang oleh doktrin *res judicata* dan *functus officio* daripada menaikkan semula isu pembatal berkenaan dengan penghakiman ingkar yang mereka cuba untuk memajukan di dalam tindakan mereka. Jelas sekali, tindakan tersebut mencabul proses undang-undang (lihat perenggan 36).]

Notes

For case on schedule of assets, see 11 *Mallal's Digest* (4th Ed, 2004 Reissue) paras 2342–2345.

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Berhad [1998] 1 MLJ 393 (distd)
Khoo Kay Hock v EJ Ketting & Ors [1978] 2 MLJ 57 (refd)
King Hock Ching v Ung Siew Ping [1974] 2 MLJ 16 (distd)
Ong Ah Ngim v Lau Kiok Kia [1956] SCR 7 (refd)

Tenaga Nasional Berhad v Prorak Sdn Bhd [2000] 1 MLJ 479 (refd)

Legislation referred to

Administration of Estates Ordinance (Cap 80) Sarawak ss 2, 5(a), 14(1), 15, 16(1), 17(a)
Civil Law Act 1956 ss 7(2), 8(1)
Malay Reservation Enactment s 13
Probate and Administration Act 1959
Rules of the High Court 1980 O 18 r 19, O 92 r 4

Appeal from: Suit No 22–38 of 1997 (High Court, Miri)

Mekanda Singh Sandhu (Satinder Singh Sandhu with him) (Sandhu & Co) for the appellant.
KY Lin (Kadir Wong Lin & Co) for the respondents.

Nik Hashim JCA (delivering judgment of the court):

INTRODUCTION

[1] The appellant (the defendant in the court below) applied to strike out the respondents' (the plaintiffs in the court below) suit, namely, Miri High Court Suit No 22–38 of 1997 ('the suit') under O 18 r 19 and O 92 r 4 of the Rules of the High Court 1980 ('the RHC'), *inter alia*, on the ground that it was an abuse of the process of the court. The application was dismissed and hence, this appeal.

[2] On 29 September 2004, we allowed the appeal and we now give our reasons.

Background

[3] The following facts are not in dispute.

[4] On 18 June 1987 the appellant commenced an admiralty action *in rem* and *in personam* No MR 1 of 1987 ('the 1987 action') against the respondents in her capacity as administratrix of the estate Hou Bok Chai (deceased) claiming, *inter alia*, for damages for personal injuries caused to the deceased.

[5] On 20 April 1987, prior to the filing of the 1987 action, the appellant had applied for and was issued with the grant of the letters of administration to administer the estate of the deceased, but the grant did not state the said claim for damages as an asset.

[6] On 13 July 1988, an interlocutory judgment in default of appearance for damages to be assessed was entered against the third and fourth respondents, and on 17 February 1989 a similar order was entered against the second, fifth and sixth respondents.

[7] On 19 May 1994, the second to sixth respondents filed an application to strike out the 1987 action on the ground that the appellant had no right of action under the grant of the letters of administration.

[8] On 4 July 1994, on an application by the appellant, the Probate officer added as an asset the 'Action for damages under the Civil Law Act 1956' to the list of assets annexed to the grant upon a declaration made by the appellant in a further affidavit.

[9] On 29 August 1994, the High Court dismissed the respondents' application to strike out the 1987 action after hearing full arguments on the issue whether the appellant had the right to bring the action. However, there was no appeal filed by the respondents against that decision.

[10] On 6 March 1996, upon assessment of damages after hearing evidence adduced by both parties, the senior assistant registrar (SAR) allowed RM145,000 as general damages and RM6,000 as special damages, interest thereon and costs.

[11] On 28 May 1996, the High Court dismissed the respondents' appeal against the decision of the SAR on the assessment of damages. At the said hearing, the respondents contended that the default judgments were a nullity because the appellant had no right to bring the action. The High Court held that the respondents were precluded from raising it, *inter alia*, on the ground that they had not appealed against its decision on 29 August 1994.

[12] On 19 June 1996, the respondents applied to this court by way of a notice of motion for leave to appeal against the above decision. At the hearing on 21 July 1997, the respondents re-agitated the argument that the default judgments were a nullity because the appellant had no right to bring the action. After hearing submissions of both counsel on the issue of nullity, the leave to appeal was refused.

[13] On 15 September 1997, the respondents filed the suit applying for the following declaratory relief, namely, that the interlocutory judgments in default and the assessment of damages entered in the 1987 action are a nullity.

[14] On 26 November 1997, the appellant applied for an order to strike out the suit under O 18 r 19 and O 92 r 4 of the RHC, *inter alia*, on the ground that it was an abuse of the process of the court.

[15] On 30 November 1998, the learned judicial commissioner ('the learned JC') dismissed the appellant's application. The appellant, being dissatisfied with the decision, appealed to this court.

JC's Decision

[16] In his grounds of judgment, the JC ruled that the default judgments were a nullity because the court lacked jurisdiction as the judgments were obtained in contravention of s 17(a) of the Administration of Estates Ordinance (Cap 80) Sarawak ('the Ordinance') in that the claim for damages was not included in the grant of the letters of administration and as such, the appellant was not vested with the right to sue. He also ruled that the amendment to include the right to sue in the list of assets annexed to the grant in 1994 had

no retrospective effect and cited *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Berhad* [1998] 1 MLJ 393, 1 AMR 909; *Ong Ah Ngim v Lau Kiok Kia* [1956] SCR 7; and *King Hock Ching v Ung Siew Ping* [1974] 2 MLJ 16, in support of his decision.

Contentions

[17] Before us, counsel for the appellant submitted that in bringing the claim for damages for injury and death caused to the deceased, the appellant did not contrave any statutory prohibition because:

(i) the Ordinance does not contain any provision prohibiting the bringing of an action in respect of a claim unless the claim is included in the list of assets annexed to the grant;

(ii) the failure to include the claim for damages in the said list was immaterial in that the appellant, being the lawfully appointed administratrix of the deceased, was already vested with the right to sue for claim of damages by virtue of ss 7 and 8 of the Civil Law Act 1956 ('the Act'), and therefore, had the title to sue;

(iii) the list of assets annexed to the grant does not affect the title as it is important for the purposes of assessment of the estate duty payable and for making provision for security; and

(iv) alternatively, the failure to include the claim for damages was not fatal because the omission was cured as it was added to the list in accordance with s 16(1) of the Ordinance and the addition relates back to the date of the grant.

Findings

[18] In our judgment, there was much merit in the appellant's submission. We agreed with the appellant that *Badiaddin*'s case was not applicable. From a perusal of ss 15 and 17 of the Ordinance, it is clear that they do not impose any prohibitions unlike in *Badiaddin*'s case which was concerned with an order of sale made in violation of a prohibition imposed by s 13 of the Malay Reservations Enactment which provides:

> No Malay holding shall be attached in execution of a decree or order of any court unless the suit or decree in respect of which such order was made was instituted before the commencement of this Enactment.'

[19] Section 15 of the Ordinance provides that upon the issue of the letters of administration the assets set out in the list shall vest in the administrator for the purpose of administration. Whereas s 17 of the Ordinance imposes upon the administrator duties which includes the duty to collect and recover all the property, assets and effects covered by the grant. Both these sections concern the administration of estates of the deceased persons. They do not

prohibit the administrator from dealing with any asset not included in the list annexed to the grant. None of the provisions in the Ordinance contains such a prohibition. Since there was no defiance of any statutory prohibition, the instant case was not exceptional that would justify the exercise of the inherent jurisdiction to set aside the default judgments, the final orders which the appellant had been granted (see *Tenaga Nasional Berhad v Prorak Sdn Bhd* [2000] 1 AMR 1071 at p 1084).

[20] It was noted in the title to the action and in the statement of claim that the appellant had brought the action as administratrix of the estate of her late husband Hou Bok Chai, and that she was lawfully issued with the letters of administration by the Probate officer Baram on 20 April 1987. It is clear that as at that date she became possessed with the official grant of representation issued to the representative of a person dying intestate (see interpretation s 2 of the Ordinance). And by virtue of the said letters of administration, the appellant became possessed with statutory powers to bring actions in tort by ss 7 and 8 of the Act in respect of the injury and death caused to the deceased. Under s 7 she had the right to sue for compensation for the loss of support and reasonable expenses occasioned by the death of the deceased for the benefit of the dependants of the deceased. It is expressly provided in s 7(2) that such an action shall be brought by and in the name of the executor or the administrator of the person deceased. By s 8(1) on the death of any person all causes of action subsisting against or vested in him shall survive against, or as the case may be, for the benefit of his estate with the exception of the causes of action for defamation, seduction, inducing one spouse to leave or remain apart from another and adultery.

[21] Thus, in the circumstances, the appellant was entitled at all material times as administratrix of her deceased husband to enforce the statutory rights vested in her by virtue of ss 7 and 8 and claim for:

(1) damages under s 7 for the benefit of herself and the children of the deceased; and

(2) damages under s 8 for the benefit of the estate of the deceased.

[22] In the Federal Court case of *Khoo Kay Hock v EJ Ketting & Ors* [1978] 2 MLJ 57, the plaintiff took out a writ against the defendant claiming damages for negligently causing the death of the deceased. One of the objections taken by the defendant was that the plaintiff had no title to sue because the schedule of assets annexed to the grant did not include the claim. In rejecting the objection, His Lordship Raja Azlan Shah FCJ (as His Royal Highness then was) at p 58 G-H said:

> … The endorsement of the writ that the plaintiff is bringing the action in a representative capacity as administrator is the crucial matter …

[23] Here it is worthy of note that although that case concerned the Probate and Administration Act 1959 (Act 97) which is applicable to West Malaysia,

the decision in that case however could be relied upon in deciding the present case which involved the Ordinance, for both Act 97 and the Ordinance serve a common purpose, that is, to provide for the proper administration of the estates of deceased persons.

[24] Therefore, we were of the view that since the appellant had the legal capacity to bring the action at the material time, the default judgments which were entered regularly, were indeed not a nullity as contended by the respondents.

[25] From his judgment we noticed with regret that the learned JC had erred in law in failing to appreciate the true object or purpose of the inventory or schedule of property or list annexed to the grant. The assets listed in the grant are vested in the administrator upon the issue of letters of administration for the purposes of administration. Section 15 of the Ordinance states:

> The issue by a Probate officer of probate or letters of administration shall vest in the executor or administrator named therein, and if more than one, jointly, for the purpose of administration, all the property, estate and effects of the deceased set out in the list annexed to the grant and all property exempted under sub-section (1) of s 4.

[26] The inventory or schedule of property or list of assets annexed to the grant provides a description of the assets to be administered and is important for the purpose of assessment of the true value of the estate and the estate duty payable or making provision for security. In this matter, it is relevant to note that s 5(a) of the Ordinance provides that grant of letters of administration is not to be issued until an affidavit *and inventory in the prescribed form of the property and assets of the deceased is sworn and proper estate duty is paid* (s 5(b)). Moreover, s 16(1) of the Ordinance empowers the Probate officer to add an asset omitted from the inventory after it is declared by a further affidavit and *after payment of such further duty and interest as may be due thereon.* (Emphasis added).

[27] In *Khoo Kay Hock*, supra, His Lordship Raja Azlan Shah FCJ (as His Royal Highness then was) said at p 58:

> The schedule of property to the grant of letters of administration does not in law affect the title of the personal representative of a deceased person to institute legal proceedings. It does not affect him one way or another. It is only a description of the property to be administered and not a description of his status to sue … .
>
> The object of the law relating to the collection of estate duty is a fiscal measure enacted to secure revenue for the State on certain classes of property on death. It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of this law are conceived in the interest of revenue and once that object is achieved according to law, the party founding his claim on the schedule will not be defeated on the ground of the initial defect in the said schedule. We indorse what was said by Smith J in *Chua Chee Chor v Chua Kim Yong & Ors*, supra, and reproduce it here:

'The principal object of the schedule to the grant of Letters of Administration appears to be for the purpose of ensuring that correct security is given. It does not prove the deceased's title to the property scheduled.'

[28] With regard to the alternative submission, we agreed with Mr Mekanda Singh Sandhu, counsel for the appellant that the failure to include the claim for damages in the list of assets annexed to the grant was not fatal but curable by amendment. The amendment to the list on 4 July 1994 dated back to the date of the original issue of the grant of the letters of administration, ie 20 April 1987, and as such, the amended list must be read as though the amendment had been inserted from the beginning.

[29] In the instant case, the letters of administration declares:

BE IT KNOWN that *at the date hereunder written*, the letters of administration of all the within mentioned property of Hou Bok Chai … .

were granted under Section 3 of the Administration of Estates Ordinance to YONG SIEW NGIING (F) K 131206, wife of deceased, housewife … .

(Emphasis added)

[30] Thus, with the grant of the letters of administration, the appellant became vested with the authority to sue for damages as from the 20 April 1987 and hence, she was properly clothed with the authority to bring the action against the respondents. In our view, the learned JC had erred in law when he held that the amendment to the letters of administration on 4 July 1994 did not have retrospective effect to the date of the grant on the ground that the claim was already barred. For the above reasons, it was therefore not justified to allow the respondents to attack the default judgments.

[31] Counsel for the respondents, Mr KY Lin, referred us to two Sarawak cases, namely: *Ong Ah Ngim* and *King Hock Ching*, supra, to support his argument that since the appellant had obtained the default judgments in 1988 and 1989 and only amended the letters of administration to include the right to sue for damages in 1994, the court had no jurisdiction to enter judgment in default because in 1988 and 1989, the appellant was not vested with the right to sue for damages and therefore, the amendment has no retrospective effect.

[32] With respect, we were unable to agree with him. In fact, *Ong Ah Ngim* was in the appellant's favour. Rodley J in that case, emphasized particularly on the justice of the case by allowing an adjournment so that the plaintiff could amend the list of assets annexed to the grant and hence to have the title to sue, by inserting Lots 526 and 527 therein under s 16 of the Ordinance which provides *inter alia* that any asset omitted from the inventory required by s 5(a) may be declared by a further affidavit. Before granting the adjournment, the learned judge aptly said:

In my view it would be a denial of justice to dismiss this action for want of title.

[33] In *King Hock Ching*, supra, the plaintiff was suing in the capacity of an administrator of his late mother's estate. The letters of administration were issued in Singapore. The defendant sought to set aside the writ for nullity. The issues before the court were:

(a) whether the Singapore letters of administration confer title upon the plaintiff to sue as administrator of the estate of the deceased without anything more being done in respect of it; and

(b) whether a subsequent authentication of these letters of administration by a probate officer under s 14 of the Ordinance confers such title upon the plaintiff, and if so, with effect from when?

[34] Tan Chiaw Thong J held:

(1) The Singapore grant by itself conferred no title on the plaintiff to institute the action in this case as administrator of the estate of the deceased and the writ was therefore a nullity;

(2) An authentication made under s 14(1) of the Ordinance has the effect of a grant by the probate officer in respect of the assets of the deceased specified in the schedule to such authentication. Such authentication took effect from the day on which it was made and has no retrospective effect.

As the authentication here took place after the institution of proceedings in the case, the plaintiff had no title to sue.

[35] To our mind, *King Hock Ching*, supra, is distinguishable on facts and therefore not applicable to the instant case. That case concerned a foreign grant under s 14 which requires authentication by the Probate officer before the grant can be effective, whereas the case before us, concerned the grant of probate or letters of administration under s 15 where such authentication is not a condition before the issue of the grant.

Conclusion

[36] Finally, on the facts of this case, we conclude by saying that the learned JC had erred when he dismissed the appellant's application with costs. He ought to have held that the respondents were precluded by the doctrines of *res judicata* and *functus officio* from re-agitating the nullity issue on the default judgments that they were trying to bring up in their suit. Clearly, the suit amounted to an abuse of the process of the court.

[37] Accordingly, we allowed the appeal with costs here and below. We ordered that the respondents' suit be struck out and the deposit paid into court to be refunded to the appellant.

Appeal allowed.

Reported by AG Kalidas